

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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**TH 8D**

May 22, 2003

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO OFFICE
KERI AKERS, COASTAL PROGRAM ANALYST, SAN DIEGO OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR
AMENDMENT NO. 1-03B (HABITAT MANAGEMENT PLAN) TO
MELLO I, MELLO II, AND AGUA HENDIONDA LAND USE PLAN
SEGMENTS, AND ASSOCIATED FEDERAL CONSISTENCY ITEM
NO. CC-007-003 (For Public Hearing and Possible Commission Action
at the Meeting of June 11-13, 2003)**

SYNOPSIS**SUMMARY OF AMENDMENT REQUEST**

The amendment submittal includes the draft Habitat Management Plan (HMP), dated December 1999, second addendum to the HMP (December 16, 2002), and revisions to the Mello I, Mello II and Agua Hedionda land use plans. No changes to the City's certified Implementation Plan (IP) are proposed at this time. The submittal also includes a federal consistency determination addressing the Incidental Take Permit for listed species that will be issued to the City by the U.S. Fish and Wildlife Service to implement the HMP.

The subject local coastal program (LCP) amendment request was filed by the City of Carlsbad on February 7, 2003. The LCP amendment includes revisions and additions to the LCP that parallel the City's most recently adopted changes to the HMP, as provided in the second HMP addendum. The purpose of the proposed additions and revisions to these land use plan segments is to provide additional habitat protection requirements and conservation standards for the remaining undeveloped properties within the Carlsbad coastal zone, concentrate future development adjacent to already-developed areas, and to reconcile differences between the certified LCP's provisions regarding encroachment and preservation of dual-criteria slopes and the provisions of the proposed HMP.

The land use plan revisions and the revisions to the 1999 HMP, as provided in the second HMP addendum, were made by the City in response to input from Commission staff. The City and Commission staff have been working cooperatively since January 2000 to ensure that the final HMP meets all relevant LCP, Coastal Act and federal Coastal Zone Management Act, 16 U.S.C. § 1451, *et seq.*, (CZMA) requirements, is consistent with the goals of the regional Multiple Habitat Conservation Plan (MHCP) for San Diego County, and provides adequate protection for environmentally sensitive habitat areas (ESHA) in the coastal zone. Although the HMP involves tradeoffs between habitat protection and development, it will function as part of a regional plan under the state Natural Communities Conservation Planning (NCCP) program, Fish & Game Code § 2800 *et seq.*, to manage extensive habitat areas and mitigate impacts, in a manner that will provide greater overall protection of resources than continued piecemeal review of development on a site-by-site basis.

The objectives of the southern California NCCP program include identification and protection of habitat in sufficient amounts and distributions to enable long-term conservation of the coastal sage community and the California gnatcatcher, as well as other sensitive habitat types. Generally, the purpose of the HCP and NCCP processes is to preserve natural habitat by identifying and implementing an interlinked natural communities preserve system. Through these processes, the resource agencies are pursuing a long-range approach to habitat management and preserve creation over the more traditional mitigation approach to habitat impacts. Although HCPs have been prepared for areas as small as a single lot, the MHCP and its subarea plans are intended to function at the citywide or regional level, instead of focusing on impacts to individual properties.

Implementation of this large-scale approach to habitat conservation will allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it is most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed species. Although the goals of the HCP and NCCP processes include maintenance of species viability and potential long-term recovery, impacts to habitat occupied by listed species are still allowed. This approach differs from Coastal Act policies regarding ESHA, which provides that when a habitat must be considered environmentally sensitive (e.g., because it has become especially rare and/or provides crucial habitat for listed species), impacts to the habitat should not be allowed except for uses that are dependent on that resource.

The 90-day deadline for the Commission to act upon the LCP amendment, pursuant to Section 30512 of the Coastal Act, would have been May 8, 2003; however, on April 9, 2003, the Commission approved a one-year time extension for Carlsbad LCP amendment #1-03 A&B (Smith and HMP) to allow for a southern California hearing. The subject amendment also includes a federal consistency certification. The 90-day deadline for the Commission to act upon the federal consistency certification would also have been May

8, 2003. However, the City agreed to extend the federal consistency review deadline by one month, to June 13, 2003, so that the LCP amendment and federal consistency review could be scheduled for the same Commission meeting, and potential inconsistencies could be avoided. Therefore, the Commission must take action on the federal consistency review no later than June 13, 2003.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the proposed amendment as submitted and approval if modified as suggested in this report. As submitted by the City of Carlsbad, the HMP and addenda and the associated LUP revisions provide protective standards for sensitive habitat and listed species within the City's coastal zone. However, based upon more comprehensive surveys of individual properties through staff field investigation, and supplemental information received during the review period, several clarifications are necessary to the proposed standards in the Mello II segment of the LCP and the associated sections of the HMP for Zone 21 properties, to address existing onsite habitat types, location of preserve areas, and appropriate development limitations. The changes also address development constraints associated with future construction of the Poinsettia Lane extension through Zone 21 and the habitat corridor.

Since completion of the 1999 draft HMP, some of the properties included in the standards areas have developed hardlines that are acceptable to the property owner, the City, and the wildlife agencies, and have been approved through LCP amendments and/or coastal development permits by the Commission. A property contains a "hardline" if, in association with a future development plan, a line can be drawn to establish the habitat preserve boundary on the property. The suggested modifications require the HMP to be updated to reflect the changes made to the hardline maps for these properties. These changes are necessary to ensure accuracy and maximum effectiveness of both the HMP and the amended LCP.

Additional suggested modifications include updated figures and tables in the HMP for consistency with the proposed changes. A future LCP amendment to the certified Implementation Plan (IP) should be submitted to address consistency with the certified Mello I, Mello II and Agua Hedionda land use plans, if modified as suggested. Finally, interim standards are suggested for application and authority of the land use plans and IP if any conflicts should arise between them before the IP is amended.

A federal consistency certification is also associated with the HMP, regarding an Incidental Take Permit (ITP) for listed species. The ITP must be issued to the City by the U.S. Fish and Wildlife Service prior to any development undertaken under the umbrella of the HMP and its requirements. The LCP amendment and federal consistency certification are addressed in separate resolutions and motions within this staff report. Staff recommends that the Commission conditionally concur with the City's consistency certification, subject to the City's acceptance of the Commission's suggested

modifications to the LCP amendment. The appropriate resolutions and motions for the LCP amendment begin on Page 7. The appropriate resolution and motion for the federal consistency certification begins on Page 9. The Suggested Modifications begin on Page 9. Findings for denial of the Mello I, Mello II and Agua Hedionda Land Use Plan amendments begin on Page 17. The findings for approval of the Mello I, Mello II and Agua Hedionda Land Use Plan amendments, if modified, begin on Page 35. The findings for certification of the federal consistency determination begin on Page 47.

LCP BACKGROUND

The City's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties and East Batiquitos Lagoon/Hunt Properties and Village Redevelopment Area. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. The Commission certified the Agua Hedionda Land Use Plan in 1982. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all of its segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified. The subject amendment request affects the Mello I, Mello II and Agua Hedionda segments of the LCP.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from **Keri Akers** at the San Diego Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402, (619) 767-2370.

PART I. OVERVIEW – LCP AMENDMENT

A. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

B. PUBLIC PARTICIPATION

The City has held both Planning Commission and City Council hearings with regard to the subject amendment request. Each of these local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

C. HMP HISTORY/BACKGROUND

In 1993, the coastal California gnatcatcher was listed as threatened under the federal Endangered Species Act (ESA)), 16 U.S.C. § 1531 *et seq.* The coastal California gnatcatcher is found primarily in coastal sage scrub habitat in southern California. Based upon scientific estimates, coastal sage scrub habitat in San Diego County has been reduced by more than 70% of its original coverage. Fewer than 900 gnatcatcher pairs likely remain in the county; however, San Diego County currently supports the largest gnatcatcher population in California and presents the most significant opportunity for large-scale preservation of the species. This listing has had a significant effect on future public and private development in areas containing gnatcatcher habitat. In order to proceed, development in areas with gnatcatchers would have to completely avoid “take” or else receive federal authorization. Several other species have been listed under the federal or state ESA since 1993; currently, approximately 25 species that are listed, or proposed for listing, occur in or are associated with habitat located in Carlsbad.

The Carlsbad HMP and the Multiple Habitat Conservation Program (MHCP) are intended to meet criteria for the California Department of Fish and Game’s (CDFG) Natural Communities Conservation Planning process (NCCP), which was initiated in southern California in 1991 and of the federal Endangered Species Act (ESA). In the initial phases of the NCCP coastal sage scrub (CSS) program, guidelines for process and

conservation of CSS were developed, and the USFWS adopted a special rule regarding the gnatcatcher pursuant to Section 4(d) of the federal ESA, 16 U.S.C. § 1533(d). *See* 50 C.F.R. § 17.41(b), 58 Fed. Reg. 65088 (Dec. 10, 1993). This special rule exempts take of gnatcatchers during the interim period prior to approval of plans under the NCCP program, provided the take is consistent with NCCP process and conservation guidelines. In connection with the NCCP's program for CSS and the 4(d) rule, through an informal regional agreement, interim impacts in the San Diego region have been capped at 5% of the existing habitat within each jurisdiction participating in the NCCP program.

In 1992, the City signed an NCCP agreement with the California Resources Agency to develop the Habitat Management Plan (HMP) as part of the City's General Plan. The 1992 agreement enrolled the City in the NCCP program as an "Ongoing Multi-Species Plan" as defined in the NCCP process guidelines. The agreement was supplemented in 1993 to clarify that the HMP is a subarea plan of the San Diego County MHCP.

As prepared, the draft Carlsbad HMP is intended to satisfy the requirements of a federal HCP, and to function as a subarea plan of the regional MHCP under the NCCP. The MHCP study area involves approximately 186 square miles in northwestern San Diego County. This area includes the coastal cities of Carlsbad, Encinitas, Solana Beach and Oceanside, as well as the inland cities of Vista and San Marcos and several independent special districts. The participating local governments and other entities will implement their portions of the MHCP through individual subarea plans such as the Carlsbad HMP. Once approved, the MHCP and its subarea plans will replace interim restrictions placed by the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and will allow the incidental take of the gnatcatcher and other covered species as specified in the plan. Although the HMP is a subarea plan of the MHCP, it will receive its own federal take permit and is not subject to finalization of the MHCP in order to be approved.

The City developed the HMP to meet the requirements of a habitat conservation plan pursuant to section 10(a)(2)(A) of the Endangered Species Act [16 USC §1539(a)(2)(A)]. The draft Carlsbad HMP was initially approved by the Carlsbad City Council on September 21, 1999. An addendum was then prepared based on comments provided by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG), and the revised document, dated December 1999, was submitted to the wildlife agencies for approval of an incidental take permit (ITP) under section 9(a)(1)(B) [16 USC § 1538(a)(1)(B)] of the Endangered Species Act. Issuance of the permit would have predated approval of the final HMP itself, and was requested in order to begin development of a City golf course which had been included as a "hardline" property in the HMP with pre-agreed limitations on development area and mitigation requirements. Since incidental take permits are not listed in the CCMP as one of the permits for activities likely to affect coastal uses and resources, the Commission requested, and

received, permission from the Office of Ocean and Coastal Resource Management (OCRM) in August 2000 for a federal consistency review of the HMP. The purpose of the consistency review in this case is to determine whether issuance of the ITP would be consistent with the California Coastal Act and the CCMP.

On June 7, 2000, the Carlsbad Planning Commission certified an environmental impact report (EIR) for the proposed Carlsbad city golf course, and approved a coastal development permit for the golf course development. The Coastal Commission appealed the City's CDP based on concerns regarding the project's inconsistency with the habitat protection policies in the certified LCP. The policy revisions proposed in this amendment, along with revisions to the golf course proposal, are designed to allow for a revised golf course project to be permitted by the Commission on appeal, consistent with the HMP and LCP, as amended.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends that the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

A. RESOLUTION I (Resolution to approve certification of the City of Carlsbad LCP Mello I, Mello II and Agua Hedionda Land Use Plan Amendment #1-03B, as submitted)

MOTION I

I move that the Commission certify the LCP Land Use Plan Amendment #1-03B, as submitted.

Staff Recommendation

Staff recommends a **No** vote and adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution I

The Commission hereby denies the amendment request to the LCP Land Use Plan, as submitted, and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the land use plan, as amended, will be inconsistent with

applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and certification of the land use plan amendment will not meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act; as there would be feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

B. RESOLUTION II (Resolution to approve certification of the City of Carlsbad Mello I, Mello II and Agua Hedionda LCP Land Use Plan Amendment 1-03B, if Modified)

MOTION II

I move that the Commission certify the LCP Land Use Plan Amendment #1-03B, if modified.

Staff Recommendation

Staff recommends a **YES** vote and adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution II

The Commission hereby approves the amendment request to the LCP Land Use Plan, as modified, and adopts the findings stated below on the grounds that the amendment will meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the land use plan, as amended, will be consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and certification of the land use plan amendment will meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act; as there would be no feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

PART III – FEDERAL CONSISTENCY

A. Applicant's Consistency Certification

The City of Carlsbad certifies that the proposed activity complies with the federally-approved California Coastal Management Program and will be conducted in a manner consistent with such program.

B. Staff Recommendation

The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission conditionally concur with the City of Carlsbad's consistency certification.

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

Conditional Concurrence

The Commission hereby **conditionally concurs** with the consistency certification made by the City of Carlsbad on the grounds that the project would be consistent with the enforceable policies of the CCMP, provided the City of Carlsbad agrees to modify the project consistent with the conditions specified below, as provided for in 15 CFR §930.4.

Conditions

The Commission adopts the suggested modifications to the Local Coastal Program amendment as conditions to its concurrence with the City's consistency certification.

PART IV. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed LCP Amendment be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. The following changes should be made to policy 7-14 of the Second Addendum to the HMP, beginning on page 8:

The following standards apply to those parcels in Zones 20 and 21 shown on Exhibit A to this Addendum which are located within the biological core and linkage areas designated in the MHCP. They are in addition to the

applicable, general conservation standards contained in 7-1 through 7-11 and the HMP. The standards are intended to direct development to existing disturbed areas to the maximum extent feasible, limit impacts to native vegetation, and establish viable core and linkage areas as designated in the HMP. In general, each property shall be allowed to develop at least 25% of the site with appropriate mitigation as specified in 7-8 through 7-11. When individual properties are proposed for rezoning or development, detailed biological information will be required to determine whether the proposal is consistent with the HMP, subsection 7 and the standards below, based upon the actual type, location and condition of onsite resources, and the appropriate locations of development and preservation areas. One or more wildlife crossings under Poinsettia Lane shall be provided if recommended by the wildlife resource agencies.

~~(A. Assessor's Parcel No. 207-100-48 (Aura Circle) – Avoid removal of maritime succulent scrub. Preserve at least 75% of coastal sage scrub. Mitigate habitat impacts by creation or enhancement of like habitat adjacent to Agua Hedionda Lagoon if possible, as part of overall mitigation requirements.~~

A.B. Assessor's Parcel No. 212-120-33 (Hieatt) – No impact to vernal pools. Minimize impact to vernal pool watersheds.

B.C. Assessor's Parcel No. 212-010-3 (Kirgis) – Preserve 75% of property with development clustered immediately adjacent to Kelly Ranch.

C.D. Assessor's Parcel No. 215-070-35 (Fernandez) – Cluster development on disturbed areas to the maximum extent feasible. Maximum 10% impact on CSS and SMC for access purposes.

D.E. Assessor's Parcel No. 215-040-03 (Muroya) – Cluster development on disturbed areas to the maximum extent feasible. Maximum 10% impact on CSS and SMC for access purposes.

~~F. Assessor's Parcel No. 215-070-13 and 36 (Promenade) – Cluster development on disturbed areas. No impacts to native habitat allowed.~~

~~G. Assessor's Parcel No. 214-140-44, 214-170-36, 46, 54, 58, 59, 72, 74, 75, 76, 77, 79, (Thompson/Tabata) – Cluster development on disturbed areas. No impacts to native habitat allowed.~~

~~H. Assessor's Parcel No. 215-80-04 and 22 (Redeemer by the Sea) – Cluster development on disturbed areas. No impacts to native habitat allowed.~~

~~E.I. Assessor's Parcel No. 212-040-50 (Emerald Point) – Development limited to disturbed and non-native grassland areas. No impacts to native habitat allowed.~~

~~F.J. Assessor's Parcel No. 215-020-06 (RWSB) – Development shall be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered to the maximum extent feasible along limited to disturbed portions of the property adjacent to Cassia Lane and the future Poinsettia Lane extension. construction of Poinsettia Lane and additional 10% encroachment for site access. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property and designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.~~

~~G.K. Assessor's Parcel No. 215-020-07 (Maldonado) – Development shall be concentrated along the Poinsettia Lane extension and shall be limited to the western half of the property. Cluster development southwest of future Poinsettia Lane extension. No impacts to the coast oak woodland and riparian area except for Poinsettia Lane extension. The disturbed area northeast of Poinsettia Lane is recommended for offsite mitigation for other properties in Zone 21. The eastern half of the property is recommended for offsite mitigation for other properties in Zone 21; however, at minimum, a wildlife corridor linkage oriented generally north-south shall be provided on the eastern half of the property and designed to connect to neighboring properties with existing or potential wildlife corridor linkages. The corridor linkage shall include any onsite coast oak woodland area.~~

~~H.L. Assessor's Parcel No. 215-050-21 (Namikas) – Development shall be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands except for Poinsettia Lane extension. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property, include the onsite coast oak woodland area, and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation~~

through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~I.M.~~ Assessor's Parcel No. 215-050-22 (Sudduth) - Development shall be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands except for Poinsettia Lane extension. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property include the onsite coast oak woodland area and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~J.N.~~ Assessor's Parcel No. 215-050-44, 45, 46, 47 (Kevane) - Development shall be limited to a maximum of 25% of the property, ~~not including Poinsettia Lane construction,~~ and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands shall be allowed. except for Poinsettia Lane extension. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property, include the coast oak woodland, and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~K.O.~~ Assessor's Parcel No. 215-050-12 (Reiter) - Development shall be limited to a maximum of 25% of the property, ~~not including Poinsettia Lane construction,~~ and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands shall be allowed except for Poinsettia Lane extension. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property, include the coast oak woodland, and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~L.P.~~ Assessor's Parcel No. 215-050-73 (Levatino) – Maximum 25% development clustered on the southern portion of the property. Buffer widths may be reduced and/or additional impacts may be allowed if

necessary to obtain site access, and/or to accommodate Circulation Road improvements.

2. A hardline map for Aura Circle, as submitted by the City to the Commission on May 16, 2003, and consistent with Exhibit 8 of this staff report, should be added to the HMP as Figure 36.
3. Text conditions for the Aura Circle hardline should be added to the second HMP addendum at the end of page 10:

For Aura Circle (Figure 36), development shall be clustered on the south portion of the property. Grading shall be kept entirely off the largest area of CSS in the north part of the site. Created slopes shall be revegetated with coastal sage scrub, and existing disturbed areas of the project site that are not identified for development on the hardline map shall be used for onsite mitigation through restoration/recreation of coastal sage scrub. Post-development habitat area and open space shall be placed into the HMP preserve.

4. New Hardline Preserve maps shall be developed according to the attached Exhibits 9-12 for the Roesch Property, Carlsbad Promenade, Redeemer by the Sea, and Thompson-Tabata, and incorporated into the HMP as Figures 37-40, consistent with the conditions of the Coastal Commission's actions for Carlsbad LCP Amendment No. 1-00D (Roesch) and LCP Amendment No. 1-02B, C and D (Carlsbad Promenade, Redeemer by the Sea and Thompson-Tabata).
5. Revised Hardline Preserve maps for the Hub Park/SDG&E Property, the Zone 19 Park and Kelly Ranch (Exhibits 13-15) shall replace the existing Figures 17, 19 and 12 in the HMP, consistent with the conditions of the Coastal Commission's action for Coastal Development Permit 6-01-167 (Hub Park/SDG&E), the City's action for Coastal Development Permit 6-CII-02-029/Local ID 1-31 (Zone 19 Park), and the Kelly Ranch Open Space Map approved in the Commission's action on LCP Amendment No. 2-99D (Kelly Ranch). The open space as shown on the Kelly Ranch Open Space Map for Planning Area L (Callahan) should be added as a new standard in the HMP and Mello II land use plan instead of a hardline.
6. The existing Hardline Preserve map for the Kevane property (Figure 25) shall be removed.
7. On Page 8 of the Second HMP addendum, revise policy 7.13 (e), and on Page 52 of the Mello II LUP revisions, revise policy 3-7 (e) as follows:

- e. The area shown as “Veterans Memorial Park Development Area” is designated for public recreational use. It is the intent of this policy that the public park area be developed so as to maximize public access and provide a variety of recreational opportunities.
Development within steep slopes and/or native vegetation shall be limited to passive recreational facilities, such as recreational trails and picnic areas. Within the proposed development areas, grading of steep slopes with native vegetation shall be limited to the minimum amount necessary to allow such uses.
- 8. In the 1999 draft HMP, Tables 3, 6, 7 and 8, and Figures 6, 26 and 27 should be updated to reflect the changes to proposed habitat impacts and preserve areas, standards properties and hardlined properties that will result from adoption of these suggested modifications.
- 9. The following change should be made to the Mello I LUP segment revisions in the LCP amendment, on page 17:
 - j. If any conflict should arise between these Policies of the LCP and the provisions of the HMP, the LCP shall take precedence. If any conflict should arise between the policies of the certified Mello I LUP and the certified Implementation Plan, the policies of the certified Mello I LUP shall take precedence.
- 10. The following change should be made to the Mello II LUP segment revisions in the LCP amendment, on page 42:
 - i. If any conflict should arise between these Policies of the LCP and the provisions of the HMP, the LCP shall take precedence. If any conflict should arise between the policies of the certified Mello II LUP and the certified Implementation Plan, the policies of the certified Mello II LUP shall take precedence.
- 11. The following changes should be made to the Mello II LUP segment revisions in the LCP amendment, beginning on page number 51:
 - ~~3-8.1 Assessor's Parcel No. 207-100-48 (Aura Circle) Avoid removal of maritime succulent scrub. Preserve at least 75% of coastal sage scrub. Mitigate impacts to CSS by creation or enhancement of like habitat adjacent to Agua Hedionda Lagoon if possible, as part of overall mitigation requirements.~~

- ~~3.8.13-8.2~~ Assessor's Parcel No. 212-120-33 (Heatt) – No impact to vernal pools. Minimize impact to vernal pool watersheds.
- ~~3-8.23-8.3~~ Assessor's Parcel No. 212-010-3 (Kirgis) – Preserve 75% of property with development clustered immediately adjacent to Kelly Ranch.
- ~~3-8.33-8.4~~ Assessor's Parcel No. 215-070-35 (Fernandez) – Cluster development on disturbed areas to the maximum extent feasible. Maximum 10% impact on CSS and SMC for access purposes.
- ~~3-8.43-8.5~~ Assessor's Parcel No. 215-040-03 (Muroya) – Cluster development on disturbed areas to the maximum extent feasible. Maximum 10% impact on CSS and SMC for access purposes.
- ~~3-8.6~~ Assessor's Parcel No. 215-070-13 and 36 (Promenade) – Cluster development on disturbed areas. No impacts to habitat allowed.
- ~~3-8.7~~ Assessor's Parcel No. 214-140-44, 214-170-36, 46, 54, 58, 59, 72, 74, 75, 76, 77, 79, (Thompson/Tabata) – Cluster development on disturbed areas. No impacts to native habitat allowed.
- ~~3-8.8~~ Assessor's Parcel No. 215-80-04 and 22 (Redeemer by the Sea) – Cluster development on disturbed areas. No impacts to native habitat allowed.
- ~~3-8.53-8.9~~ Assessor's Parcel No. 212-040-50 (Emerald Point) – Development limited to disturbed and non-native grassland areas. No impacts to native habitat allowed.
- ~~3-8.63-8.10~~ Assessor's Parcel No. 215-020-06 (RWSB) – Development shall be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered to the maximum extent feasible along limited to disturbed portions of the property adjacent to Cassia Lane and the future Poinsettia Lane extension. Impacts to SMC habitat shall be minimized. limited to construction of Poinsettia Lane and additional 10% encroachment for site access. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern half of the property and designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or

creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~3-8.73-8.14~~ Assessor's Parcel No. 215-020-07 (Maldonado) – Development shall be concentrated along the Poinsettia Lane extension and shall be limited to the western half of the property. Cluster development southwest of future Poinsettia Lane extension. No impacts to the coast oak woodland and riparian area except for Poinsettia Lane extension. Consider wildlife crossing through Poinsettia Lane if required by wildlife resource agencies. The disturbed area northeast of Poinsettia Lane is recommended for offsite mitigation for other properties in Zone 21. The eastern half of the property is recommended for offsite mitigation for other properties in Zone 21; however, at minimum a wildlife corridor linkage oriented generally north-south shall be provided on the eastern half of the property and designed to connect to neighboring properties with existing or potential wildlife corridor linkages. The corridor linkage shall include any onsite coast oak woodland area.

~~3-8.83-8.12~~ Assessor's Parcel No. 215-050-21 (Namikas) – Development shall be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands except for Poinsettia Lane extension. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property, include the onsite coast oak woodland area, and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~3-8.93-8.13~~ Assessor's Parcel No. 215-050-22 (Sudduth) – Development shall be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands except for Poinsettia Lane extension. A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property include the onsite coast oak woodland area and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~3-8.103-8.14~~ Assessor's Parcel No. 215-050-44, 45, 46, 47 (Kevane) - Development shall be limited to a maximum of 25% of the property, ~~not including Poinsettia Lane construction,~~ and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands ~~shall be allowed except for Poinsettia Lane extension.~~ A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property, include the coast oak woodland, and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~3-8.113-8.15~~ Assessor's Parcel No. 215-050-12 (Reiter) - Development shall be limited to a maximum of 25% of the property, ~~not including Poinsettia Lane construction,~~ and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands ~~shall be allowed except for Poinsettia Lane extension.~~ A wildlife corridor linkage oriented generally north-south shall be provided on the eastern portion of the property, include the coast oak woodland, and be designed to connect to neighboring properties with existing or potential wildlife corridor linkages. Impacts to native habitat shall require onsite mitigation through restoration and/or creation of habitat within the designated corridor linkage, in addition to any other required mitigation.

~~3-8.123-8.16~~ Assessor's Parcel No. 215-050-73 (Levatino) – Maximum 25% development clustered on the southern portion of the property. Buffer widths may be reduced and/or additional impacts may be allowed if necessary to obtain site access.

PART V: FINDINGS FOR DENIAL OF THE CITY OF CARLSBAD MELLO I, MELLO II, AND AGUA HEDIONDA LAND USE PLAN AMENDMENT 1-03B, AS SUBMITTED AND FINDINGS FOR APPROVAL, IF MODIFIED

1. AMENDMENT DESCRIPTION

The proposed LCP amendment will incorporate the HMP into the LCP, and make corresponding changes to the Mello I, Mello II and Agua Hedionda land use plan segments. The changes to the land use plan segments are required in order to maintain consistency between these segments and the HMP. The land use plan revisions include the addition of specific references to the HMP, definitions for environmentally sensitive

habitat and associated resources, inclusion of Coastal Act Section 30233 in the LCP, mitigation for impacts to upland habitat, and required buffers and fuel modification zones. The Mello II LUP changes provide specific standards for several undeveloped properties located within individual planning areas to ensure protection of environmentally sensitive habitat within the coastal zone. The second HMP addendum mirrors these changes to ensure that both documents have been appropriately integrated and will consistently work together.

Components of Preserve System

The draft HMP proposes to protect the endangered California Gnatcatcher and other listed species by contributing to an interlinked regional preserve system. The proposed preserve area for the HMP will be created from land in three different categories: hardline properties, standards areas, and existing preserve.

- Hardlines

Certain properties have been designated in the HMP with specific development/conservation footprints, and are known as “hardline” properties. If development is proposed on these sites in a manner that is substantially in conformance with the hardline, the development will be authorized consistent with all other regulatory standards and procedures. These hardline properties are shown on individual maps in Section D of the HMP. The purpose of this process is to ensure that certain areas of onsite habitat will be set aside for permanent preservation, and that the property owners have committed to abide by the established development limitation upon approval of the HMP.

- Standards Areas

The second category of proposed preserve area in the HMP contains the “standards” areas, for which the HMP contains guidance relative to future habitat preservation and the siting of new development. The standards areas involve specific undeveloped properties within the City that are located in the biological core and linkage areas identified in the County MHCP. The City’s standards are focused geographically, using the Local Facilities Management Zones identified in the City’s growth management plan. These properties are proposed to have conservation goals and standards which would allow at least 25% development of the site, but which provide for minimum conservation of 67% of coastal sage scrub and 75% of gnatcatchers on each site. Several areas have significantly higher standards for greater protection of individual resource areas. Emphasis is placed upon creation of preservation corridors and linkage to the larger MHCP habitat areas. Projects proposed within the standards areas will also require additional consultation with the City and the wildlife agencies to determine whether the project complies with the relevant standards and is consistent with the HMP. Upon receiving approval of their development plans, these property owners will receive take authorization.

- Existing Preserve Areas

The third category contains existing preserve lands, such as the City's three coastal lagoons and associated wetlands, the Dawson Los Monos Reserve, the Carlsbad Highlands Mitigation Bank, and other preserves located within previously-approved development. Approximately 4,450 acres of existing preserve land will be incorporated into the HMP. These areas, which include both private and public land, have already been conserved for their wildlife value through previous development actions, such as mitigation banks and required open space.

Preserve Management

The HMP as submitted provides that areas that have been placed into open space preserve will be turned over to an appropriate conservation agency with responsibility for the overall HMP preserve system, to be managed in perpetuity for conservation purposes. The City of Carlsbad is currently preparing the long-term management and monitoring plan for its portion of the MHCP addressed in the HMP. Interim management will cover the first three years following approval of the HMP, during which time management activities will generally be the responsibility of the owners of the conserved lands unless other arrangements have been made. During the three-year period, the long-term management plan will be developed in cooperation with existing reserve managers, private owners of conserved lands, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service.

The long-term management plan will address habitat restoration and revegetation, hydrology and flood control, recreation and public access, species reintroduction, enforcement, adaptive management, and monitoring. Section F of the HMP provides a detailed summary of the land management processes and required actions that will take place as part of long-term management. It is anticipated that the conserved lands will be owned and managed by a number of public and private entities until such time as a single conservation entity may be designated for overall management. Roles and responsibilities for management of conserved habitat shall be conducted in a manner consistent with the implementing agreement that has been entered into between the City of Carlsbad and the U.S. Fish and Wildlife Service. If regional arrangements for habitat management are established in the future in connection with the MHCP planning efforts, some or all of the management activities for the Carlsbad HMP preserve system could ultimately be merged with the regional program.

The proposed amendments to the Mello I, Mello II and Agua Hedionda land use plan segments will incorporate additional requirements for establishment of a preserve management plan. Section 7-1.10 of the Mello I land use plan and Section 3-1.10 of the Mello II and Agua Hedionda land use plans provide that land inside and outside the coastal zone which serves as mitigation for habitat impacts in the coastal zone shall be

permanently retired from development potential, and secured as part of the HMP preserve management plan as a condition of development approval.

As discussed in greater detail below, the second HMP addendum provides that in the coastal zone, there will be no net loss of coastal sage scrub, maritime succulent scrub, southern maritime chaparral, southern mixed chaparral, native grassland or oak woodland. For impacts that are allowed to coastal zone sites with these habitat types, mitigation shall include a creation component, which requires establishment of new habitat area at a ratio of at least 1:1 (one acre of creation for every one acre of habitat impact) in order to achieve the no net loss standard. In certain appropriate cases, substantial restoration may also be substituted for creation. Restoration and enhancement will also be acceptable for mitigation beyond the 1:1 creation requirement. Onsite or offsite open space preserve areas may be utilized to satisfy required mitigation for habitat impacts, if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of habitat. Habitat mitigation requirements other than the creation or substantial restoration component may be partially or wholly fulfilled by acquisition of existing like habitat and/or retirement of development credits on existing like habitat with permanent preservation as part of the HMP preserve management plan.

The preserve management plan shall address the mitigation areas to the satisfaction of the City, the wildlife agencies and the Coastal Commission, and ensure adequate funding to protect the preserve as open space and maintain the biological values of the mitigation areas in perpetuity. At a minimum, monitoring reports shall be required as a condition of development approval after the first and third year of habitat mitigation efforts. No impacts to habitat may occur until management provisions and funding are in place. As submitted, the LCP amendment provides that the preserve management plan must be incorporated into the Implementation Plan of the LCP through an LCP amendment within one year of Commission certification of the HMP as part of the certified LCP.

Development Standards

As proposed by the City, new policy language has been provided that defines the nature and scope of the HMP in relation to the LCP, establishes revised resource protection provisions that reflect the goals of both Chapter 3 and the HMP, adds definitions related to sensitive habitat and wetlands, and provides detailed requirements for habitat loss mitigation, buffers, and fuel modification restrictions. Portions of the existing LCP have been revised to ensure consistency in requirements for wetland buffers, grading and erosion control, and protection of steep slopes. Individual properties have also been addressed in the second HMP addendum as additional “standards” properties. The development standards that will be applied to these specific sites are intended to provide development requirements and restrictions that will ensure protection of the most critical habitat areas and protect proposed wildlife corridor linkages within the coastal zone, while allowing some limited impacts to ESHA.

The following mitigation ratios will be required for authorized habitat impacts on properties within the coastal zone:

- 2:1 for coastal sage scrub
- 3:1 for all other rare native vegetation except wetlands
- 3:1 for riparian areas
- 4:1 for vernal pools, other seasonal wetlands, and salt marsh

Additionally, the 1999 draft HMP with addenda, as proposed, contains provisions for mitigation of adverse impacts to coastal sage scrub and other native vegetative communities. In review of coastal development, the City must evaluate adverse impacts to ESHA in the coastal zone on a site-by-site basis to determine if such adverse impacts are permissible under the Coastal Act and the HMP, and if so, whether they are adequately offset or mitigated by revegetation, habitat restoration, habitat creation, and/or other habitat enhancement measures either on or offsite. In the second addendum to the December 1999 HMP, the City has proposed revisions to the mitigation program for application in the coastal zone.

These revisions address, among other things, requirements for creation, restoration, substantial restoration and revegetation when used as mitigation for habitat impacts. “Creation” means that habitat will be newly established in an area that does not currently contain that functional habitat type, but where the soils, topography, etc. are appropriate for long-term viability and may have supported the habitat in the past. “Restoration” means that habitat which is recognizable as belonging to a specific vegetation community, but which has been previously disturbed and/or contains exotic invasive species so as to reduce its functional value, will be enhanced to return the habitat area to overall health and typical functional value. “Substantial restoration” is applicable to highly-degraded areas where the effective function of the habitat type has been lost, but which still contains remnant plants of the identified habitat. “Revegetation” means replanting with appropriate species, and is applicable to both restoration efforts in existing habitat, and to creation where habitat does not currently exist.

Mitigation outside the coastal zone will be considered acceptable if, in addition to meeting the criteria identified above, the mitigation clearly ensures higher levels of habitat protection and value in the context of a regional habitat preservation program than would be provided by providing all mitigation within the coastal zone, and furthers the goal of concentrating development within the coastal zone. Preservation of existing, onsite native vegetation is considered mitigation in the draft 1999 HMP with addendum. However, the second HMP addendum specifically addresses mitigation requirements in the coastal zone, and does not allow onsite preservation to count as mitigation. Additionally, the second HMP addendum provides that in the coastal zone, there will be no net loss of coastal sage scrub, maritime succulent scrub, southern maritime chaparral, southern mixed chaparral, native grassland or oak woodland.

When impacts are permitted to any of these vegetation types, mitigation shall include a “creation” component, as previously defined, at a ratio of at least 1:1 (one acre of creation for every one acre of habitat impact) in order to achieve the no net loss standard. In certain appropriate cases, “substantial restoration” may also be substituted for creation. Onsite or offsite open space preserve areas may be utilized to satisfy required mitigation for habitat impacts, if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of habitat. It is important to note that mitigation credit through acquisition, restoration and/or enhancement cannot be allowed on sites which have already been preserved or required as mitigation areas for some other impact or entitlement.

Buffers for coastal habitat would be established as follows:

- A minimum 100 foot buffer shall be required from all freshwater and saltwater wetlands areas.
- A minimum 50 foot buffer shall be required from riparian areas and coast oak woodlands. No development or brush management shall take place within the buffer area for these habitat types except as otherwise specified herein.
- If a riparian area is associated with steep slopes (>25%), the 50 foot buffer shall be measured from the top of the slope.
- For steep slopes not associated with a riparian area, and for nonsteep areas (<25% slope) with native vegetation, a minimum 20 foot buffer shall be required. For steep slopes, the buffer shall be measured from the top of the slope. No development may be located within the buffer except as otherwise specified herein. However, if brush management is required for fire protection, Zone 3 (to a maximum of 20 feet) may be located within the buffer area if allowed by the fire management authority.
- Zones 1 and 2 for brush management and fire protection, where required, shall be located on the portion of the property proposed for development and outside of required buffers. Any plantings in Zone 2 must consist of native vegetation appropriate to the habitat.
- Recreation trails and public access pathways may be permitted in the required buffer area within the 15 feet closest to the adjacent developable area, provided that the construction of the trails and/or pathways and their proposed uses are consistent with the preservation goals for adjacent habitat, and that appropriate measures are taken for their physical separation from sensitive areas.

Trails and passive recreation are an allowable use in ESHA, with certain exceptions such as wetlands. When buffers are 50 feet or more in width, recreational trails shall be located in the first 15 feet of the buffer closest to development, to provide maximum protection for the preserved area. Grading in buffers would not be permitted with the

exception of fuel modification as specified. The 1999 draft HMP did not propose any buffers for upland habitat, and did not address fuel modification or brush management restrictions, or the placement and buffering of recreational trails. The above criteria for buffers, fuel modification restrictions, and the location of recreational trails considerably strengthens the draft HMP's protection for coastal habitat.

Highly-Constrained Properties

There are a number of properties in the coastal zone that are entirely or almost entirely constrained by ESHA. The second HMP addendum provides that for those coastal zone properties which have more than 80% of their area in ESHA, at least 75% of the property shall be conserved. Alternatively, if the City, with the concurrence of the wildlife agencies and the Coastal Commission agree upon a hardline preserve boundary for any of these properties, then a new hardline map may be created in the HMP through an LCP amendment and the amount of onsite preservation as identified in the hardline boundary shall apply. A majority of the remaining undeveloped parcels in the coastal zone with large areas of ESHA are located in the Zone 20 and 21 planning areas. These are individually addressed in the second HMP addendum, beginning on Page 8.

2. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that portions of the Land Use Plan as set forth in the preceding resolutions, are not in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

- a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.
- b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.
- d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

- e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the proposed amendments to the Mello I, Mello II and Agua Hedionda land use plans do not conform with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone.

3. FINDINGS FOR DENIAL/NONCONFORMITY WITH CHAPTER 3 OF THE COASTAL ACT, AS SUBMITTED.

A. Environmentally Sensitive Habitat Area

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act requires that new development be concentrated in areas able to support it without adversely affecting coastal resources and states, in part:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

As noted above, Section 30240 of the Coastal Act requires protection of environmentally sensitive habitat areas (ESHA). As defined in Section 30107.5 of the Coastal Act, ESHA is defined as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” As previously described in Section I.C., the HMP is a segment of the state’s larger NCCP program that is being developed in response to the listing of the California Gnatcatcher as an endangered species. The focus of the NCCP and HMP is to preserve coastal sage scrub and related upland habitats that provide support for the gnatcatcher but have become increasingly rare and fragmented. However, not all of these habitat areas will be

protected under the NCCP and HMP program, which attempts to provide a balanced approach between development and habitat protection. The Commission finds that the potential impacts to ESHA that would be allowed under the 1999 draft Carlsbad HMP with addenda, when considered individually, are inconsistent with Section 30240 of the Coastal Act.

Currently, the certified LCP only protects native habitat located on slopes greater than 25% grade, known as “dual criteria slopes.” This approach was established in LCPs that were originally developed during the 1980s, prior to the listing of the California gnatcatcher and other rare species. The Carlsbad LCP has not been updated to respond to these new listings and the inception of the NCCP process. The Commission has acknowledged the need for such updates to the LCP for several years, beginning with the review of the proposed Cannon Road extension in 1994. The Commission supports the submittal of the HMP as part of the LCP to ensure that both plans work together to protect ESHA in the coastal zone. All of the sensitive resources protected through the NCCP process are also protected by the Coastal Act.

Revisions in Second Addendum to the HMP

The proposed LCP amendment contains several significant changes to the currently certified LCP and to the 1999 draft HMP which will be applicable to development within the coastal zone. In general, the second HMP addendum proposes mitigation standards within the coastal zone that provide greater protection than those established in the 1999 draft HMP. These enhanced mitigation ratios will apply to the entire City. The 1999 draft HMP required 2:1 mitigation (including onsite preservation) for coastal sage scrub occupied by the California gnatcatcher, and 1:1 mitigation for unoccupied coastal sage scrub, mixed coastal sage scrub/chaparral and chaparral other than southern maritime chaparral. Southern maritime chaparral, southern coastal bluff scrub, maritime succulent scrub and native grassland land required 3:1 mitigation. Wetlands, vernal pools and riparian habitat impacts required mitigation to meet a no net loss standard. Within the coastal zone, the City’s current proposal will require 2:1 mitigation for all coastal sage scrub and 3:1 mitigation for all other rare native upland vegetation, 3:1 mitigation for riparian areas, and 4:1 mitigation for vernal pools, other seasonal wetlands and salt marsh. The higher mitigation ratios included in the second HMP addendum are intended to ensure that, given the difficulties of establishing and maintaining functionally valuable habitat communities, the long-term goal for no net loss of coastal habitat resources can be met.

Revisions to Hardlines

Since the 1999 draft HMP was prepared, some of the properties included in the standards areas have developed hardlines that are acceptable to the City, the wildlife agencies, and the Commission, and have been approved through LCP amendments. These properties

should be removed from the “standards area” category, and have permanent hardline maps included in the final HMP. Additionally, one new hardline in the coastal zone (Aura Circle) has been developed by City staff since the LCP amendment was submitted to the Commission for review. In accordance with Resolution 2003-038 passed by the Carlsbad City Council on February 4, 2003, the Council delegated authority to City staff to incorporate new hardlines into HMP prior to the Commission’s consideration of the LCP amendment.

1999 Draft HMP Hardlines - Currently, there are six hardline properties in the 1999 draft HMP that are located partially or completely within the Carlsbad coastal zone (City Golf Course, Manzanita Partners, Veterans Memorial Park, Hub Park and SDG&E Property, Zone 19 Park, and Kelly Ranch). During review by the Commission and/or Commission staff, these hardlines have been addressed as follows:

1. City Golf Course – Over a one-year period, City staff and Commission staff worked to develop a revised golf course site layout that eliminates impacts to wetlands and southern maritime chaparral in the coastal zone, and allows all required coastal sage scrub mitigation (2:1 ratio) to be provided onsite to restore and improve wildlife corridor connections. The revised golf course layout and hardline has been submitted to the Commission as part of the second HMP addendum.
2. Manzanita Partners - An amended hardline design for the Manzanita Partners site was approved by the Commission in July 2002 (Carlsbad LCP Amendment No. 1-00E) with conditions for impact limitations to protect onsite southern maritime chaparral. These modifications should be reflected in an updated hardline map consistent with the Commission’s approval of the LCP amendment authorizing a rezone of the Manzanita property.
3. Hub Park/SDG&E Property – This site was the subject of Carlsbad Coastal Development Permit #6-01-167, approved by the Commission in October 2002, which was conditioned so that the majority of steep slopes and wetland, riparian, and upland native habitat areas would be placed into deed-restricted open space and preserved. These conditions should be reflected in an updated hardline map that is consistent with Exhibit 5 of CDP #6-01-167, as approved by the Commission, and as shown in concept on attached Exhibit 13.
4. Kelly Ranch Master Plan – This LCP amendment No. 2-99D was approved by the Commission for the 433 acre Kelly Ranch which includes a 195 acre wetland preserve comprised of the wetlands and uplands of the eastern end of Agua Hedionda Lagoon in Carlsbad. The LCP amendment rescinded the previously certified Kelly Ranch Master Plan and replaced it with land use designations and zoning due partially to the enactment of the NCCP. The City

of Carlsbad and the wildlife agencies had worked together to implement the NCCP planning process and establish the habitat corridors on the Kelly Ranch property necessary to connect critical areas used by multiple species, such as the gnatcatcher. These critical areas are to be preserved as open space as part of the City of Carlsbad's draft HMP. The proposed upland open space system contains steep and non-steep areas containing primarily coastal sage scrub and southern maritime chaparral vegetation in two core habitat corridors oriented in a north/south and an east/west direction which provide connectivity between Macario Canyon, preserve areas to the south of Kelly Ranch and Agua Hedionda Lagoon. Through the Commission's review of the comprehensive LCP amendment for the entire 433 acres, additional area was placed into the open space system for its scenic quality as a natural landform, in addition to its habitat value, specifically on Planning Areas D, J and L. Steep slope areas outside the open space preserve were allowed to be developed in order to concentrate development and maximize the preservation of a contiguous, high quality habitat preserve system. The additional open space on Planning Area L was not identified as a hardline at time of Commission review of the Kelly Ranch LCP amendment and should, thus, be added as a standard applicable to the Callahan parcel as part of the HMP and proposed LUP amendment.

Veterans Memorial Park and Zone 19 Park - These park sites are City-owned lands for which the City prepared hardlines as part of an overall conservation agreement with the U.S. Fish and Wildlife Service for the City's contribution to the MHCP preserve system. A revised hardline was prepared for the Zone 19 Park site through the City's action for Coastal Development Permit 6-CII-02-029/Local ID 1-31. The Commission's suggested modifications for Veteran's Memorial Park would require development within areas of steep slopes and/or native vegetation to be limited to passive recreational facilities, such as recreational trails and picnic areas. Within the proposed development areas, grading of steep slopes with native vegetation shall be limited to the minimum amount necessary to allow such uses.

Through the proposed hardline and policy language addressing these park sites, most of the significant areas of ESHA on these sites will be maintained, including the eastern portion of Veterans Memorial Park and on the north and west sides of the Zone 19 Park. The preserve areas on Veterans Memorial Park will provide a continued linkage between Linkage F and Core 4, which connects to Agua Hedionda Lagoon and existing preserve area on the Kelly Ranch property. However, as proposed, some steep slopes and habitat would be impacted by park development. The proposed policy language in the revised Mello II LUP and Section 7.13 of the second HMP addendum indicates that steep slope areas shall be planned for more passive type uses with grading of such areas limited to the amount necessary to allow such uses.

The Commission's concern is with regard to the areas shown for development that are outside the preserve open space corridor. Detailed biological surveys and slope mapping have not been made available for Veterans Memorial Park; however, the HMP hardline map indicates there are three non-contiguous areas of coastal sage scrub and one small area of riparian scrub within the area shown for development, some of which have been previously disturbed by construction of Faraday Road and adjacent development. The proposed standards would provide some protection for these areas while allowing compatible park uses, by specifying that only passive recreation should be allowed, and that grading should be limited. However, the Commission finds these standards for the park development are not specific enough given the uncertainty of the actual park development plan and the fact that the site may not be developed for 20 years or more. The revised language should indicate that development in steep slopes and native vegetation shall be limited to passive recreational facilities, such as trails and picnic areas. Within the proposed development areas, grading of steep slopes with native vegetation shall be limited to the minimum amount necessary to allow those passive recreational uses. In addition to these standards, all the mitigation and buffer requirements of the LCP shall apply. Such revisions to the standards applicable to future development of the site should be incorporated into the HMP and the Mello II LUP to accompany the hardline maps and assure consistency with Coastal Act requirements.

Aura Circle Proposed Hardline - The Aura Circle proposed hardline map was submitted by the City on May 16, 2003, as an addition to the LCP amendment package and HMP second addendum. The Aura Circle property, which totals 15 acres, contains approximately 5.45 acres of coastal sage scrub and native grassland, which would be considered ESHA. These native vegetation areas comprise approximately 40% of the total site area. Negotiations between Commission staff and the property owner focused on the dispersed locations of existing disturbed, developable areas, the difficulties of accessing those areas without habitat impacts, and the desirability of creating a single large habitat area on the site. The resulting hardline map allows a reasonable development footprint, while requiring onsite restoration of graded slopes, restoration of onsite disturbed habitat, and preservation of a large contiguous area of open space (approximately 60% of the site). To allow concentration of development while maximizing protection of ESHA, the following conditions should be required for the Aura Circle hardline:

Development shall be clustered on the south portion of the property. Grading shall be kept entirely off the largest area of CSS in the north part of the site. Created slopes shall be revegetated with coastal sage scrub, and existing disturbed areas of the project site that are not identified for development on the hardline map shall be used for onsite mitigation through restoration/recreation of coastal sage scrub. Post-development habitat area and open space shall be placed into the HMP preserve.

Potential Hardlines for Standards Properties with Development Approvals – Since the 1999 draft HMP was submitted to the Commission, several properties that were included in the draft “standards areas” have come before the Commission as rezones that separated the subject sites into developable area and preserve area, with zoning map conditions attached to protect onsite habitat. These properties should be removed from the “standards areas” designation and have the approved development/preservation areas appropriately delineated on hardline maps to be incorporated into the final HMP. The subject properties are:

1. Roesch Property - In June 2001, the Commission approved the rezone of this site (CAR LCPA 1-00D) from Limited Control (LC) to One-Family Residential (R-1-7,500-Q) and Open Space (O-S). In its action, the Commission approved the proposed amendment with suggested modifications that addressed restrictions on use of the 21.87-acre designated open space area, revegetation and restoration to mitigate impacts to native vegetation, and maintenance and monitoring requirements for mitigation areas. The development area and open space preserve area should be shown on a hardline map that is consistent with the Commission’s action as described above.
2. Carlsbad Promenade/Redeemer by the Sea - In June 2002, the Commission approved the rezone of these sites from LC to One-Family Residential (CAR LCPA 1-02B&C). Areas containing native habitat were required to be preserved under an open space conservation easement. In its action, the Commission approved the proposed amendments with suggested modifications that addressed protection of native habitat and wetlands, restricted use of open space areas to habitat conservation, restoration and enhancement, and required buffers between structures and native habitat. The development areas and open space preserve areas should be shown on a hardline map that is consistent with the Commission’s actions as described above.
3. Thompson-Tabata – In August 2002, the Commission approved the rezone of this site from LC to One Family Residential and Residential Density Multiple (RD/M). In its approval, the Commission approved the proposed amendment with suggested modifications that addressed preservation of onsite habitat through an open space conservation easement, restricted uses in the open space to habitat conservation, restoration and enhancement, and operation and maintenance of existing storm water facilities in the riparian area as necessary to serve existing and future development, and provided buffer and development separation requirements for upland and wetland habitat. The development areas and open space preserve areas should be shown on a hardline map that is consistent with the Commission’s actions as described above.

As submitted, the representation of the above described properties in the proposed 1999 draft HMP with addenda do not reflect subsequent City and Commission actions on several of the properties and/or negotiations between Commission and City staff which have occurred since the 1999 draft was circulated for public review. Revision of the maps and associated policies are necessary, in some cases, to conform to Coastal Act requirements. Additionally, there are several figures in the HMP that indicate proposed standard areas, proposed hardlines and acreages of habitat conserved and/or impacted in the different planning areas as a result of the approved hardlines. These maps and figures should be revised to reflect the approved changes mentioned above. If the above-described changes are made, the hardlines will be consistent with the LCP and the Coastal Act.

B. Revisions to “Standards” Areas/Properties

To ensure consistency and maximum habitat protection for remaining undeveloped coastal properties, the City has prepared standards that will be applied to all of those undeveloped properties. These standards address buffers, brush management and fuel modification, protection of wetlands, mitigation requirements and ratios, and specify maximum developable areas for highly constrained properties. In general, implementation of the LCP, as amended, will increase the level of planning detail on individual coastal properties containing ESHA, in order to maximize protection of the key habitat and wildlife movement areas in the coastal zone that are necessary for the overall success of the HMP and its preservation goals.

Many properties included in the “standards” areas are currently zoned Limited Control (LC), which was a zoning designation approved in the 1981 LCP for areas which were in transition from agriculture to urban land uses. At the time the LCP was certified, it was not known what the appropriate standards applicable to future buildout of these properties would be. However, at that particular time, it was clear that application of residential zoning to these sites was premature based on concerns about topography, environmental sensitivity, and then-existing agricultural use, and how these issues would be addressed in the urbanization process. The certified LCP implementation plan specifies, in Section 21.39.010 of the City’s zoning code, that future land use planning for LC areas should be carried out prior to any rezoning of these lands for urban development. This planning had not yet been undertaken, and individual rezoning requests, in the form of LCP amendments, have been submitted to the Commission on a piecemeal basis.

The 1999 draft HMP proposed that properties within the “standards areas” should be allowed to develop at least 25% of the site. For those properties containing coastal sage scrub and/or gnatcatchers, a minimum of 67% of coastal sage scrub and 75% of gnatcatchers on each site was required to be preserved. The second HMP addendum strengthens these habitat protection standards for coastal zone properties, by specifying

that for those properties which are all or nearly all covered with environmentally sensitive habitat (i.e., 80% or more of the site), a *maximum* of 25% site development will be allowed. In general, the Coastal Act supports a finding that areas within the coastal zone containing significant stands of coastal sage scrub, especially those that are occupied by listed species (e.g., gnatcatchers) or used for foraging by those species, are environmentally sensitive habitat areas. Other vegetative communities, such as southern maritime chaparral (SMC), may also be determined to be ESHA based upon their overall rarity, and/or the presence of sensitive plant and animal species or its foraging use and habitat values. Potential exceptions to this standard may be made on the basis of case-by-case scientific review, and may include areas of very degraded, highly fragmented, or isolated habitat.

As submitted, the LCP revisions are not in conformance with Chapter 3 policies. Specifically, the standards identified for certain properties in the Zone 21 planning area do not acknowledge all the onsite resource values and development constraints in order to ensure habitat connectivity and establishment of a viable open space preserve. Some corrections are necessary to address actual habitat types and the alignment of the future Poinsettia Lane extension through Zone 21. The proposed extension of Poinsettia Lane, which is a Circulation Element road, was identified as the least environmentally-damaging alternative in a prior amendment to the certified Carlsbad LCP.

Zone 21 contains a majority of the remaining undeveloped habitat in the City's coastal zone. Within Zone 21, the largest area of contiguous habitat is located on several adjoining properties between Ambrosia Lane and El Camino Real. Most of these properties consist largely of southern maritime chaparral, along with an oak woodland/riparian corridor running roughly north-south through the area, and transitional areas of coastal sage scrub. The extension for Poinsettia Lane is proposed to run from northwest to southeast through the middle of this corridor, which will have unavoidable impacts to the oak woodland area on the Namikas property.

The relatively large amount of intact habitat, the connections to other existing open space preserve areas, and the general rarity of southern maritime chaparral and associated narrow endemic species, establish this as an environmentally sensitive habitat area requiring priority protection. Zone 21 contains most of the habitats comprising the western half of Core Area 6 as provided in the 1999 draft HMP, which is the primary link between the eastern and western halves of the City. The 1999 draft HMP requires that the majority of remaining natural habitat be conserved, and that there should be a net loss of no more than 10% of coastal sage scrub and southern maritime chaparral in this area. Additionally, the draft HMP requires that habitat should be conserved in a continuous configuration across the zone to allow for continued east-west connectivity and animal movement between El Camino Real (Zone 10) and Linkage Area F (Zones 19 and 20). The planning standards specify that removal of southern maritime chaparral, maritime succulent scrub and narrow endemic plant populations should be minimized. Habitat connectivity and wildlife movement should be maximized with a habitat corridor

between 500-1000 feet, with a minimum width of 500 feet. In order to establish a viable wildlife corridor in this area, and preserve the maximum amount of environmentally sensitive habitat in accordance with these standards, it is appropriate to require a 25% development limitation for those properties with 80% or more of their area in ESHA. This limitation is consistent with the standards proposed in the second HMP addendum, as previously described.

For these properties in Zone 21, it is important to cluster development to the maximum extent feasible, in order to reduce direct habitat impacts, provide maximum buffer areas, and establish the widest feasible wildlife corridor that provides the most benefit for wildlife movement. The proposed corridor alignment will connect to existing open space on the Lohf subdivision to the east, and the Manzanita property to the northeast. Direct habitat impacts should be reduced by clustering development on these sites along the east side of Ambrosia Lane, on the west side of the proposed Poinsettia Lane extension, and along existing disturbed habitat south of Cassia Drive (the northern boundary of the corridor).

Within this corridor area, specific standards have been developed for the following properties: RWSB, Maldonado, Sudduth, Namikas, Kevane and Reiter. These properties have been addressed as follows:

RWSB – This property is located at the northernmost point of the corridor, near the proposed intersection of the Poinsettia Lane extension and Cassia Lane, and is zoned LC (Limited Control). The property contains southern maritime chaparral, with disturbed areas present along the north and west sides of the property. As proposed in the second HMP addendum, development would be limited to the disturbed portion of the property adjacent to Cassia Lane, and impacts to southern maritime chaparral would be limited to the construction of Poinsettia Lane and an additional 10% encroachment for access purposes. Based upon additional information which has been received concerning the amount of area that will likely be impacted by the grading impacts from construction of the future Poinsettia Lane extension, this standard has been revised to ensure that a reasonable development area can still be provided, given these limitations. In accordance with the proposed standards for highly-constrained properties, suggested modifications are necessary for the RWSB property that would limit development to a maximum of 25% of the property, not including Poinsettia Lane construction, and clustered along Cassia Lane and Poinsettia Lane. A wildlife corridor connection should be provided on the east side of the property to the Manzanita open space to the east.

Maldonado – The Maldonado property is located south of RWSB and is currently in agricultural use, with a zone classification of LC. There is no significant native habitat currently on the site. The proposed Poinsettia Lane extension will bisect the property east-west. As proposed in the second HMP addendum, development would be limited to the area southwest of the proposed Poinsettia Lane extension. Based upon

additional information which has been received concerning the amount of area that will likely be impacted by the roadway construction and grading impacts of the future Poinsettia Lane extension, this standard should be revised to ensure that a reasonable development area can still be provided, given these limitations and the lack of habitat on the property. In order to provide for a wildlife corridor connection on the east side that will connect to the RWSB and Manzanita properties, the suggested modifications should require that development shall be concentrated along the Poinsettia Lane extension and limited to the western half of the property. The eastern half of the property provides an excellent opportunity for other properties to do offsite mitigation for impacts to southern maritime chaparral.

Namikas – The Namikas property is located south of Maldonado and is 90-95% comprised of southern maritime chaparral and coast oak woodland/riparian area. The property is currently zoned LC. The proposed Poinsettia Lane extension will be constructed on the east side of the property. Consistent with the proposed standards for highly constrained properties containing all or nearly all ESHA, development is proposed to be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands except for Poinsettia Lane extension will be allowed. To provide greater specificity for corridor planning, the suggested modifications require that a wildlife corridor linkage should be provided on the eastern portion of the property, including the onsite coast oak woodland area, and be designed to connect to open space on the neighboring Maldonado, Manzanita and Lohf properties.

Sudduth – The Sudduth property is located south of Maldonado and is approximately 90% comprised of southern maritime chaparral and coast oak woodland/riparian area. The property is currently zoned LC. The proposed Poinsettia Lane extension will affect the northeast corner of the property. Consistent with the proposed standards for highly constrained properties containing all or nearly all ESHA, development is proposed to be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands except for Poinsettia Lane extension will be allowed. To provide greater specificity for corridor planning, the suggested modifications should require that a wildlife corridor linkage shall be provided on the eastern portion of the property, including the onsite coast oak woodland area, and be designed to connect to open space on the neighboring Namikas and Lohf properties.

Kevane - The Kevane property is located south of Sudduth, and has been identified as containing southern maritime chaparral and coast oak woodland/riparian area (see attached memorandum, Exhibit 19). The Kevane property is comprised of four 5-acre parcels zoned R-1 (Residential One Family). The property was included as a hardline in the 1999 draft HMP with addendum, but has been changed to a standards area in the

proposed second HMP addendum and the Mello II LUP revisions. Consistent with the proposed standards for highly constrained properties containing all or nearly all ESHA, development is proposed to be limited to a maximum of 25% of the property, to be clustered on the western portion of the site adjacent to Ambrosia Lane. Development on the eastern portion of the property would represent significant encroachment into the logical habitat corridor and linkage which will be established on adjacent properties, and would bisect the connection between the open space already established as part of the residential development directly adjacent to the east (Lohf), and the preserve area to be established on this property. No impacts to coast oak woodland, riparian areas or wetlands will be allowed. To provide greater specificity for corridor planning, the suggested modifications should require that a wildlife corridor linkage shall be provided on the eastern portion of the property, including the onsite coast oak woodland area, and be designed to connect to open space on the neighboring Sudduth, Lohf and Reiter properties. The suggested modifications also remove an incorrect reference to the Poinsettia Lane extension, which will not be constructed through this property.

Reiter – This property is located south of Kevane, and is zoned LC. The majority of the site contains southern maritime chaparral. Consistent with the proposed standards for highly constrained properties containing all or nearly all ESHA, development is proposed to be limited to a maximum of 25% of the property, not including Poinsettia Lane construction, and shall be clustered on the western portion of the property. No impacts to coast oak woodland, riparian areas or wetlands will be allowed. To provide greater specificity for corridor planning, the suggested modifications should require that a wildlife corridor linkage shall be provided on the eastern portion of the property, and be designed to connect to open space on the Kevane and Lohf properties to the north and east. The suggested modifications also remove an incorrect reference to the Poinsettia Lane extension, which will not be constructed through this property.

The standards proposed in the second HMP addendum require the wildlife corridor located on the above-described properties to average 500 feet to 1000 feet in width, with a minimum width of 500 feet (where narrower constrictions from existing development or other constraints don't already exist). Development must be located at least 50 feet from the drip line of the oak woodland, and 20 feet from upland native habitat such as southern maritime chaparral. One property that is located in the middle of this area, Maldonado, is currently in agricultural use and does not contain any native habitat. However, its location makes it essential for continuation of the corridor, and provides an ideal opportunity for other properties to undertake offsite mitigation in the form of habitat creation, thus enhancing the corridor's overall habitat value. For this property, a 50% site development limit is appropriate in order to maintain corridor width and integrity.

As submitted in the second HMP addendum, the standards for Zone 21 direct potential development to the western portion of the above-described properties and protect oak woodland and riparian areas. However, sufficient detail is not provided to acknowledge the environmental

sensitivity of southern maritime chaparral, establish the location and appropriate standards for a viable habitat corridor, and direct restoration of onsite disturbed areas within the preserve boundaries. Revisions to the standards are necessary to establish more specific development limits, especially since, with the exception of one property (Maldonado), the properties in this corridor are all or nearly all ESHA.

4. FINDINGS FOR APPROVAL, IF MODIFIED

A comparison of the above requirements, if modified, with current LCP standards for habitat protection, indicates that based on available information, approximately 40% greater conservation of environmentally sensitive habitat will result in the Zone 21 planning area. As previously noted, the certified LCP only protects native upland habitat on steep slopes, does not provide buffers for upland habitat, and does not place overall development restrictions on properties that are all or nearly all in environmentally sensitive habitat. The proposed standards in the second HMP addendum, if modified, will meet Chapter 3 requirements by maximizing habitat conservation while allowing a reasonable development area, establishing an open space preserve corridor that will protect the most sensitive areas and allow wildlife movement, and clustering future development adjacent to existing disturbed areas and urban development.

A. Conflict Resolution/ESHA and Concentration of Development

The Commission can approve an LUP amendment that is inconsistent with Chapter 3 policies only if it finds that the approval of the development raises conflicts between Coastal Act policies and that, on balance, the project as approved is most protective of significant coastal resources. The policy conflicts which arise in this LCP amendment request result from the fact that all areas determined to be ESHA would not be preserved, and concentration of development would not be achieved. In other words, to appropriately concentrate development and create a habitat preserve that addresses the long-term viability and conservation of identified sensitive species, some impacts to ESHA in the coastal zone must be accepted.

Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. The Commission finds that Sections 30240 and 30250 of the Coastal Act must be considered when reviewing the proposed habitat impacts, and the development patterns that would result from implementation of the draft HMP.

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks

and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act requires that new development be concentrated in areas able to support it without adversely affecting coastal resources and states, in part:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

The Commission finds that the draft HMP would allow impacts to individual areas of ESHA for uses that are not dependent on the ESHA, which is inconsistent with Sections 30240 of the Coastal Act. However, the Commission finds that the coastal resources of the LCP area will be, on balance, best protected by concentrating allowable development adjacent to existing urban services and other developed areas. Additionally, greater benefit will be obtained from preserving large contiguous areas of the most environmentally sensitive vegetation and wildlife areas rather than preserving all fragmented pieces of habitat in place.

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that a substantial conflict exists between two statutory directives contained in the Coastal Act. In this case, as described above, the draft HMP is inconsistent with Coastal Act policies that protect environmentally sensitive habitat area. Although the City has proposed changes to the HMP and associated policies of the certified land use plan that would delete potential impacts to wetlands in the coastal zone, impacts to environmentally sensitive habitat would still result. However, to deny the LCP amendment based on this inconsistency with the referenced Coastal Act requirements would reduce the City's ability to concentrate proposed development contiguous with existing urban development, and away from the most sensitive habitat areas, as required by Section 30250. If the LCP amendment is not approved, dispersed patterns of development will occur that are inconsistent with Section 30250. Denial of the LCP amendment would also prevent the resource protection policies of the LCP from being upgraded to clearly protect ESHA that is not located on steep slopes.

The Commission notes that the HMP proposes mitigation for habitat impacts at ratios ranging from 1:1 to 4:1, depending on the habitat type. At minimum, 1:1 mitigation in the form of new creation is required for any impacts; additional mitigation may be in the form of substantial restoration, revegetation and/or acquisition. Since some of the existing habitat that potentially could be impacted is currently of low quality (e.g.,

fragmented, disturbed and/or invaded by non-native species), it should be noted that the replacement of such habitat in areas that are suitable and will be permanently monitored and managed may provide an environmental benefit that is superior to retaining all existing areas of native habitat in place.

After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is most protective of coastal resources. In this case, the draft HMP would allow certain impacts to ESHA, including dual-criteria slopes. If modified as suggested, overall impacts to native habitat in the coastal zone would be reduced, because categories of habitat that are not currently protected would be protected, but impacts to ESHA would still occur. However, if mitigated as proposed, the replaced and protected ESHA will be located in areas that provide larger contiguous contributions to the proposed HMP preserve area, and will ensure that the critical wildlife movement corridors and largest populations of gnatcatchers within the coastal zone have sufficient areas of high-quality habitat for species survival.

In resolving the identified Coastal Act conflicts, the Commission finds that the concentration of development adjacent to existing urban development and infrastructure, and away from sensitive natural resources is, on balance, more protective of the land resources than to require that isolated areas of habitat be retained in an area adjacent to residential development. Therefore, the Commission finds that approval of the draft HMP, if modified as suggested, is on balance the most protective option for the relevant coastal resources, for the following reasons.

The HMP proposes to preserve large, contiguous blocks of habitat with the highest natural resource value relative to covered species, and to generally locate development away from these areas. In exchange for the benefits derived from a share of the incidental take authorized under the HCP, which will result in some impacts to gnatcatchers and associated adverse impacts to CSS, landowners must agree to place a majority of sensitive habitats on their properties into open space that will then become part of the permanent MHCP preserve.

Within the City of Carlsbad, approximately 8,800 acres of naturally-vegetated areas remain, or 36% of the City's total area, including approximately 3,315 acres of coastal sage scrub. In Planning Zones 19, 20 and 21, where the majority of undeveloped land in the coastal zone is located, approximately 60 acres of CSS remain. The populations of gnatcatchers within the City are important to the overall viability of the regional gnatcatcher population that will be addressed in the MHCP. As the municipality with the largest amount of gnatcatcher habitat within the MHCP, the populations represent a critical link in the distribution of the species throughout north San Diego County, particularly in the Carlsbad-Oceanside corridor, which connects gnatcatcher populations in Orange and Riverside counties with populations to the north and east of Carlsbad. The HMP would preserve approximately 6,400 acres of native habitat, as existing preserve,

proposed hardline preserve areas, and through implementation of “standards areas” in certain areas without existing development proposals.

Within the coastal zone, the second HMP addendum and LCP amendment proposes no net loss of most native vegetation types, with mitigation ratios ranging from 1:1 to 4:1 to ensure that, on balance, there will be no negative impacts to the total quantity and/or quality of ESHA within the coastal zone. Interim preserve management requirements, as included in the HMP, will cover the first three years following approval of the HMP, during which time a plan for permanent management will be developed by the City in cooperation with existing reserve managers, private owners, and the wildlife agencies.

The Commission must consider impacts of residential buildout as a means to analyze the effect of the proposed LCP amendment and make revisions, as necessary, to establish the standard of review consistent with the Coastal Act. In order to protect corridors of viable, connected habitat area which take into account the mobility and foraging requirements of listed and covered species, the Commission finds that it is appropriate to take a regional approach to the preservation of ESHAs. Instead of preserving all ESHAs in place where they are found, which could result in excessive fragmentation, reduced habitat values and difficulties in monitoring and management, it may be more protective of ESHA resources to focus on regional conservation approaches that concentrate development away from the habitat of greatest overall value. Such an approach could ensure the health and viability of larger, connected sensitive vegetative communities that support listed and covered species within the City’s jurisdiction.

The regional nature of the habitat preservation effort sets the MHCP and HMP apart from other local jurisdiction plans affecting ESHA, where the noncomprehensive nature of the plans and lack of regional resource protection standards require more stringent limitations to coastal ESHA impacts for individual sites. The clustering and concentration of development away from sensitive areas that will result from the proposed standards will provide a larger, more contiguous preserve area than if development on the same properties were to be approved on a lot-by-lot basis. The HMP also proposes to provide a higher standard of protection for coastal ESHA than currently provided by the certified LCP, which addresses only native habitat on steep slopes greater than 25% (dual-criteria slopes).

Most of the properties in the standards areas and hardlines are zoned for low- density single-family development. Although it is anticipated that clustering and density transfer within areas outside of the proposed preserve locations could allow for the same number and intensity of residential units to be developed on most properties as currently designated in the General Plan, the ultimate effect would be to locate development on smaller lots and/or a smaller overall development footprint, located further from sensitive resources and proposed wildlife movement corridors. Although current zoning and land use designations limit development in most of the standards areas and hardline properties to low-density single-family development, higher density development than is currently

allowed could appropriately occur in most of the areas identified for development in the LCP amendment. Potential impacts to these areas located in the HMP preserve would therefore be reduced, and additional benefits to the City resulting from compact urban growth, prevention of sprawl and efficient use of underlying infrastructure, public services and facilities would likely result. The Commission therefore finds that approval of the HMP and the LCP amendment, if modified as suggested, would result in increased clustering of development and reduction of urban sprawl into sensitive habitat areas.

Although implementation of the HMP and MHCP will result in some loss of native habitat and listed species throughout the region, in association with loss due to incidental take outside the preserve area, the potential losses to the habitat would be considerably higher without the HMP and MHCP, particularly outside the coastal zone where fewer development restrictions on native habitat would apply. Within the coastal zone, the existing LCP does not protect native habitat on slopes less than 25% grade and therefore the proposed LCP revisions represent a significant improvement over current requirements. Through application of proposed mitigation requirements, there will be no net loss of ESHA within the coastal zone and the regional function of the MHCP preserve will continue to be protected.

This finding that approval of the HMP is the most protective option for coastal resources is based on the assumption that the habitat mitigation will be implemented as proposed, and properly maintained in perpetuity. Should the mitigation not be managed and maintained as designed, or if the required mitigation sites are not provided as proposed, the long-term benefits of the HMP for coastal resources would not be realized. To address these concerns, the City has included revisions to the HMP and associated LUP policies which address establishment of the preserve area, funding, monitoring and management. Interim preserve management requirements, as provided in the draft HMP, will cover the first three years following approval of the HMP, during which time a plan for permanent management will be developed by the City in cooperation with existing reserve managers, private owners, and the wildlife agencies. The preserve management plan must be approved by the City, the wildlife agencies and the Commission, and shall ensure adequate funding to protect the preserve as open space and maintain the biological values of the mitigation areas in perpetuity. Additionally, the preserve management plan is required to be incorporated into the Implementation Plan of the LCP through an LCP amendment within one year of Commission certification of the HMP as part of the certified LCP.

B. Wetlands

Section 30233 is applicable to coastal development and states:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative,

and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
 - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
 - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
 - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
 - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
 - (7) Restoration purposes.
 - (8) Nature study, aquaculture, or similar resource dependent activities.
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any lagoon alterations shall be limited to very minor

incidental public facilities, restorative measures, and nature study, if otherwise in accordance with this division.

The proposed LCP amendment incorporates comprehensive language for wetlands definition and delineation into the Mello I, Mello II and Agua Hedionda land use plans, as provided in Section 30121 of the California Public Resources Code, and Title 14, California Code of Regulations Section 13577(b). The full requirements for the protection of wetlands as provided in California Public Resources Code 30233 have also been incorporated. The revised LUPs specify overall wetland mitigation standards for allowable impacts within wetlands. The HMP will promote the continuing conservation of existing wetland areas and protect their biological functions through concentration of development away from existing wetland resources and establishment of appropriate buffer areas. No negative impact to wetlands is anticipated as a result of the proposed amendments to the Mello I, Mello II or Agua Hedionda land use plans. If permitted impacts to a wetland are allowed consistent with Section 30233 requirements, mitigation shall be provided at a ratio of 3:1 for riparian impacts and 4:1 for saltwater or freshwater wetland or marsh impacts. Therefore, if modified as proposed, the land use plans can be found consistent with the wetland protection policies of the Coastal Act.

C. Water Quality

Section 30231 is applicable to development permitted pursuant to the HMP and the proposed LCP amendment, and states:

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The 1999 draft HMP with addendum, the second HMP addendum, and the LUP amendments will promote the long-term retention of large areas of native vegetation, wetlands and riparian areas in order to provide adequate habitat for listed species. Future development will be clustered on the least-sensitive areas, near existing urban development and services, and buffered from sensitive natural resources. Area not suitable for development will be preserved as open space, as part of the HMP preserve area. As a result, the HMP will promote the continuance of existing biological functions of wetland and riparian areas for water detention and groundwater recharge, reduce the

potential development of impervious surfaces, maintain natural vegetation buffer areas that protect riparian habitats and minimize alteration of natural streams.

The LCP, as certified, contains policies which protect steep hillsides in excess of 25% grade to prevent slope erosion and downstream sedimentation. The LCP also contains provisions which control the quality and quantity of runoff through Best Management Practices. The City is currently working on a comprehensive LCP amendment that will address water quality in both the land use plans and implementing ordinances to correspond to the requirements of the most recent Regional Water Quality Control Board Order No. 2001-01. No negative impacts to water quality are anticipated as a result of the proposed amendments to the Mello I, Mello II or Agua Hedionda land use plans and incorporation of the HMP. Therefore, if modified as proposed, the proposed LCP amendment can be found consistent with the water quality provisions of the Coastal Act.

D. Steep Slopes/Visual Quality.

Section 30251 of the Coastal Act provides in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

In its review of LCPs in San Diego County, the Commission has long-held that development of steep slopes in excess of 25% grade should be avoided to the extent possible, and unavoidable encroachments into steep slopes areas should be limited. This policy is supported by several Coastal Act provisions which address scenic quality, minimizing alteration of natural landforms, erosion and sedimentation control and protection of environmentally sensitive habitat areas.

The City is proposing to revise the current Mello II land use plan policy that preserves in their natural state steep slopes possessing endangered plant/animal species and /or coastal sage scrub and chaparral plant communities, known as “dual criteria” slopes, and limits encroachment to no more than 10% of the steep slope area. The proposed revisions acknowledge that Policies 3-1 and 3-8 apply to development of such areas. These policies are proposed with this amendment to address protection of ESHA, mitigation requirements, buffer areas and highly-constrained properties. In addition, the proposed language allows for the percentage of steep slope encroachment to be modified only for development consistent with the approved HMP and the resource habitat protection policies in this LCP amendment, and if approved as part of the City’s Incidental Take Permit pursuant to the adopted HMP.

This approach is consistent with the Commission's action on the LCP amendment addressing the Kelly Ranch Master Plan which required open space protection for steep hillsides for their scenic quality and value as natural landforms in addition to their habitat value. The LCP policies addressing the Kelly Ranch property were revised to acknowledge when steep slope encroachment may be permitted to concentrate development and preserve the largest amount of high-quality, contiguous habitat for a viable preserve system.

Preservation of ridgelines and siting of development a sufficient distance back from ridgelines to avoid clearance of vegetation required for fuel management is critical to preserving the scenic value of the natural landforms integral to the lagoons and their environs. In most cases, the adjacent canyons and slope areas are clearly protected under the current LCP language, contain environmentally sensitive habitat protected by Section 30240 and are within or adjacent to habitat core and linkage areas identified in the MHCP. Additionally, when these areas are visible from major coastal access routes, such as I-5, Cannon Road, La Costa Ave. and Poinsettia Lane, and public recreational areas surrounding lagoons and within public parkland, they must be protected to meet the requirements of Section 30251 and 30253 of the Coastal Act.

As proposed, the LCP policies assure that landform alteration and scenic quality will continue to be considered, in addition to the standards contained in the HMP, in review of future development proposals involving steep hillsides. The language allows for encroachment into such hillsides only when it is clearly necessary in order to concentrate development consistent with the standards and goals of the HMP. Review of any new proposed hardlines for development would require an LCP amendment which will take into consideration all of the policies of the LCP and Coastal Act when determining the appropriate location of development in relation to open space. Therefore, if modified as proposed, the land use plans will provide adequate protection of steep slopes consistent with applicable Chapter 3 policies.

E. Public Access

The following Coastal Act policies apply to the proposed amendment:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 (in part).

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area. [...]

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The City of Carlsbad has in place a Citywide Trail System which contains public shoreline and inland trails as well as viewpoints and other passive recreational facilities. In addition, there are interpretive facilities planned or developed at Agua Hedionda, Buena Vista and Batiquitos Lagoons. Further, the certified LCP calls for development of public trails along the shorelines of these scenic and environmentally sensitive water bodies. Agua Hedionda Lagoon is also utilized for water-oriented public recreational activities.

As part of the HMP, the Veteran's Memorial Park and Zone 19 park sites are preserved for the habitat value as well as their ability to accommodate the public recreational needs of the City of Carlsbad. The golf course will also provide a new public recreational opportunity within the coastal zone.

As proposed, the HMP and LUP amendments allow for public recreational trails within the buffers required between development and the preserve habitat areas; however, such trails are limited to the 15 feet of the buffer closest to development. In addition, passive public recreational uses are allowed within the steep slopes and native vegetation on the Veteran's Memorial Park site, with only minimal grading permitted. The Commission has found passive recreation a permitted use in ESHA when sited and designed to prevent impacts which would degrade such areas and Section 30240 is contained in the proposed LUP as a standard which would be applicable to such development within the City. As modified, the Commission finds the proposed LCP amendment provides the proper balance between protection of habitat value and provision of public access and recreational opportunities, all of which are important resources pursuant to the Coastal Act.

F. Relationship to Other LCP Segments

The subject LCP amendment, as submitted by the City, includes the 1999 draft HMP with two addenda and text revisions to the policies contained in the certified Mello I, Mello II and Agua Hedionda Land Use Plan segments. The submittal does not include any revisions to the East Batiquitos, West Batiquitos or Village Redevelopment segments of the City's certified LCP. Additionally, no changes to the certified LCP Implementation Plan are proposed at this time.

Although the provisions of the HMP will apply to the entire City, no changes to the other segments of the LCP are necessary because there are no new standards or hardlines proposed in those areas that may represent conflicts with existing policies of the LCP. This was not the case in the Mello I, Mello II and Agua Hedionda segments. Additionally, the City will submit revisions to the Implementation Plan as a future LCP amendment once the subject proposed revisions have become effectively certified, to use as the standard of review. The City has indicated their intent to revise the Implementation Plan to conform to the HMP and LUP requirements as soon as possible following effective certification of the subject LCP amendment.

In the interim, the Commission has included a suggested modification to acknowledge, if any conflicts should arise between the policies of the certified Mello I, Mello II or Agua Hedionda Land Use Plan provisions and the certified Implementation Plan, the LUP policies shall take precedence. With this change, the standard of review for future development will be clear, in the interim period until an Implementation Plan amendment is processed and approved.

If the suggested modifications are incorporated into the LCP amendment and the HMP, the amendment will meet the following stated policies of the City's certified LCP, as provided in the second HMP addendum:

- Develop and retain open space in all categories of land use;
- Participate in programs that restore and enhance the City's degraded natural resources;
- Implement, to the greatest extent feasible, the natural resource protection policies of the LCP;
- Preserve open space areas in as natural a state as possible;
- Participate in the statewide and regional plans for Natural Community Conservation Planning (NCCP) and the Multiple Habitat Conservation Plan to conserve sensitive environmental resources;
- Coordinate planning and development of a citywide open space system with habitat planning efforts;
- Minimize the encroachment of development into wetland and riparian areas;
- Coordinate the protection of wetlands, woodlands, riparian areas, and other sensitive habitat areas with appropriate state and federal protection agencies;
- Encourage and participate in regional planning efforts to protect environmentally sensitive species from extinction;
- Require adequate buffers between new development and environmentally sensitive habitats;
- Require private development that impacts sensitive resources to provide appropriate mitigation measures, so that the existing biodiversity within the City is maintained;
- Require that at the time of any discretionary approval, any land dedicated to the City for its habitat or scenic value have an appropriate easement and/or zoning placed on it for resource protection; and
- Recognize and implement the policies of the California Coastal Act and the Carlsbad LCP when reviewing potential development in the coastal zone.

In summary, the Commission finds that, with the suggested modifications, the LCP amendment and HMP (with second addendum) will have adequate hardline revisions, expansion of standards areas requirements, comprehensive mitigation and buffering standards, and protection of ESHA to meet Chapter 3 requirements. The implementation of the HMP and the LCP amendment, if modified as suggested, will ultimately reduce cumulative development-related impacts to regional ESHAs (e.g., the coastal sage scrub community in San Diego County that provides crucial habitat for the California gnatcatcher), encourage compact, efficient urban growth, and will preserve the maximum

amount of sensitive natural resources necessary for the preservation of the coastal California gnatcatcher and other listed species in San Diego County.

PART VI: FINDINGS FOR CERTIFICATION OF FEDERAL CONSISTENCY **CERTIFICATION**

In addition to amending its LCP, the City of Carlsbad has submitted a consistency certification, pursuant to the requirements of the federal Coastal Zone Management Act (CZMA), for the HMP. The City developed the HMP to meet the requirements of a habitat conservation plan pursuant to section 10(a)(2)(A) of the Endangered Species Act [16 USC §1539(a)(2)(A)]. The plan is necessary for the U.S. Fish and Wildlife Service to issue an incidental take permit to the City pursuant to 16 USC §1539(a)(1), in order to allow urban development within the City of Carlsbad consistent with the HMP. Since this permit is not listed in the California Coastal Management Program (CCMP) as one of the permits for activities likely to affect coastal uses and resources, the Commission requested, and received, permission from the Office of Ocean and Coastal Resource Management (OCRM) in August 2000 for a federal consistency review of the HMP.

The purpose of the consistency review in this case is to determine whether issuance of the ITP would be consistent with the California Coastal Act, and approval of the ITP has been precluded until the Commission certifies the City's federal consistency certification. As part of the overall submittal which is currently under Commission review, the City included a certification that the HMP and LCP amendment comply with the enforceable policies of the state's coastal management program, and will be conducted in a manner consistent with such program. The City has requested the Commission's concurrence with certification of consistency.

Based upon review of the 1999 draft HMP and supporting documents, Commission staff determined that the federal consistency review should be accompanied and supported by revisions to the HMP and a corresponding amendment to the Carlsbad LCP. The City has delayed submittal of its consistency certification until the LCP amendment was also submitted to the Commission so that the Commission could review the certification concurrent with the LCP amendment and rely upon the proposed changes to issue a conditional concurrence. The City's application for an incidental take permit (ITP) pursuant to Section 10 of the Endangered Species Act (ESA) requires that the City submit a federal consistency certification to the Commission. The Commission will review the ITP application, federal consistency certification, and other supporting information to ensure that the HMP is consistent with California's federally approved coastal management program (i.e., the Coastal Act). Additionally, because the Commission will be asked to rely on the HMP as providing the ways and means to ensure that Coastal Act requirements are met in circumstances where the loss of sensitive coastal resources in the coastal zone will be compensated and mitigated in areas outside the coastal zone, the

adequacy of the HMP will be evaluated relative to Coastal Act policies and Commission practice.

PART VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform to CEQA provisions. The City of Carlsbad has prepared and certified an Mitigated Negative Declaration for the HMP. The Commission has found that suggested modifications are necessary to make the amendment request consistent with Chapter 3 policies of the Coastal Act and the Carlsbad LCP. These modifications clarify requirements regarding the establishment of wildlife corridors, clarify resource protection standards regarding some of the properties subject to the LCP amendment, and update various references in the LCP amendment, including the HMP, in order to reflect recent actions by the City and the Commission. The LCP amendment will allow the development of some environmentally sensitive areas, but, on balance, the LCP amendment, if modified as suggested, provides the greatest feasible protection for significant coastal resources by concentrating development and by establishing a comprehensive, regional program for habitat mitigation and preservation. As a result of these modifications, the Commission finds that the proposed amendment does conform to CEQA provisions. The changes will not result in an intensity of land use incompatible with the surrounding area or have adverse impacts on coastal resources as modified. Therefore, the Commission finds that approval of the LCP amendment, if modified, will not result in any significant unmitigated adverse environmental impacts.